88-1656

No. _____

Supreme Court, U.S.
FILED
APR 10 198
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

October Term, 1988

298.25 ACRES OF LAND, more or less,
situate in Wayne County, West Virginia;
MILTON ROSS, *et al.* and unknown owners,
Petitioners,

vs.

UNITED STATES OF AMERICA,
Respondent,

vs.

COLUMBIA GAS TRANSMISSION CORPORATION,
Intervenor-Respondent.

PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals
For the Fourth Circuit

LINCOLN R. THORMAN
28790 Chagrin Boulevard
Cleveland, Ohio 44122
(216) 464-4227

Attorney for Petitioner and
Counsel of Record

THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—TEL. (216) 621-5647

QUESTIONS PRESENTED

I. Pursuant to Rule 71 (A) of the Federal Rules of Civil Procedure, in a condemnation proceeding, after the plaintiff has taken possession of the land; and, after a jury verdict has been rendered; and, after the court has ordered the plaintiff to pay the award into court; and, after a hearing has been held between two conflicting claimants—can the trial court dismiss with prejudice one of the conflicting claimants as improperly joined and strike the case from the docket of the court?

II. Pursuant to Rule 71 (A) of the Federal Rules of Civil Procedure, can a conflicting claimant in two different condemnation proceedings, without filing an answer, disclaim taking the just compensation in one case subject to preserving their rights in the other case, all to the detriment of the opposing conflicting claimant who incurred considerable expenses to preserve their rights in the premises by trying the case?

PARTIES APPEARING BEFORE THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

1. The heirs of Hugh and Robert Ross, the conflicting Petitioners who claim Tracts No. 550M and 556M by and through Certificates of Redemption (6400 acres) issued by the West Virginia State Auditor's Office and by and through the Transfer Section of the West Virginia Constitution, Article 13, Section 3 (2).

2. The United States of America, Respondent, the Condemnor of 298.25 acres of mineral land in the East Lynn Reservoir Project, West Virginia and known as Tracts No. 550M and 556M (Case No. 75-0061-H) and of 16,286.08 acres in the same project which encompasses Tract No. 552, but not limited to same (Case No. 77-3324-H).

3. Columbia Gas Transmission Corporation, the conflicting Intervenor-Respondent claiming ownership to the aforesaid tracts of mineral land in the aforesaid cases by and through a series of conveyances of the Smith Grants of 1796.

TABLE OF CONTENTS

Questions Presented I

Parties Appearing Before the United States Court of Appeals for the Fourth Circuit II

Table of Authorities VI

Opinion Below 2

Jurisdiction 3

Rules Involved 4

Statement of the Case 8

Reasons for Granting the Writ 12

Conclusion 16

Appendix:

Opinion (Unpublished) of the United States Court of Appeals for the Fourth Circuit, No. 86-2114 (December 8, 1988) A1

Order (Confirming Magistrate's Third Report) of the United States District Court, Southern District of West Virginia, Case No. 75-0061-H and Case No. 77-3324-H (June 25, 1986) A6

United States Magistrate's (Third) Report-Recommendation in the United States District Court, Southern District of West Virginia, Case No. 75-0061-H and Case No. 77-3324-H (May 29, 1986) A8

Order (of Reference) in the United States District Court, Southern District of West Virginia, Case No. 75-0061 and Case No. 77-3324 (March 28, 1986) A12

United States Magistrate's (Second) Report-Recommendation in the United States District Court, Southern District of West Virginia, Case No. 75-0061 (July 8, 1985) A14

Order (of Reference to Magistrate Jerry D. Hogg) in the United States District Court, Southern District of West Virginia, Case No. 75-0061 (April 16, 1985)..... A19

Judgment Order (Jury Verdict) in the United States District Court, Southern District of West Virginia, Case No. 75-0061 (April 11, 1985) A21

Order (Denying Motion for Reconsideration) in the United States District Court, Southern District of West Virginia, Case No. 75-0061 and Case No. 77-3324 (October 3, 1984)..... A22

Order (Denying Objections and Approving and Adopting in Toto the Magistrate's Report) in the United States District Court, Southern District of West Virginia, Case No. 75-0061 (June 21, 1984) A23

(Magistrate's First) Report in the United States District Court, Southern District of West Virginia, Case No. 75-0061-H (January 20, 1984) A24

Order (of Reference) in the United States District Court, Southern District of West Virginia, Case No. 75-0061-H and Case No. 77-3324 (September 26, 1983)..... A35

Order (of Consolidation) in the United States District Court, Southern District of West Virginia, Case No. 75-0061-H and Case No. 77-3324 (March 2, 1983)..... A37

Order (Dismissal of Columbia Gas Transmission Corporation—without Prejudice) in the United States District Court, Southern District of West Virginia, Case No. 75-0061-H (February 18, 1982) A40

Petition for Rehearing in the United States Court of Appeals for the Fourth Circuit, No. 86-2114 (January 10, 1989) A42

Disclaimer in the United States District Court, Southern District of West Virginia, Case No. 75-0061-H (February 18, 1982) A43

Certificate of Redemption of Lands—State of West Virginia A45

Certificate of Redemption of Lands—State of West Virginia A49

Certificate of Redemption of Lands—State of West Virginia A53

TABLE OF AUTHORITIES

Cases

Fisher's Heirs v. Camp's Heirs, 26 W. Va. 576 15

Norfolk & W. Railway Co. v. Christian, 83 W. Va. 701, 99 S.E. 13..... 15

Pardee v. Johnston, 70 W. Va. 347, 355, 74 S.E. 721 14

Wilson v. Caldwell, 98 W. Va. 661, 666, 127 S.E. 497..... 15

Wilson v. McCoy, 93 W. Va. 667, 671, 117 S.E. 473. 15

Rules

Fed. R. Civ. P. 21 4,13

Fed. R. Civ. P. 41(b) 4,13,15

Fed. R. Civ. P. 71(A)..... 8,12,13,14,15

Fed. R. Civ. P. 71A(a)..... 5,13

Fed. R. Civ. P. 71A(b)..... 5,14

Fed. R. Civ. P. 71A(c)..... 5

Fed. R. Civ. P. 71A(e)..... 6,14

Fed. R. Civ. P. 71A(i)..... 6,12,13,15

U. S. Sup. Ct. R. 19..... 12

No. _____

IN THE

Supreme Court of the United States

October Term, 1988

298.25 ACRES OF LAND, more or less,
situate in Wayne County, West Virginia;
MILTON ROSS, *et al.* and unknown owners,
Petitioners,

vs.

UNITED STATES OF AMERICA,
Respondent,

vs.

COLUMBIA GAS TRANSMISSION CORPORATION,
Intervenor-Respondent.

PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals
For the Fourth Circuit

PRAYER

The Petitioners respectfully pray that a Writ of Certiorari issue to review the Judgment and Opinion of the United States Court of Appeals for the Fourth Circuit.

OPINION BELOW

The unpublished opinion of the United States Court of Appeals for the Fourth Circuit appears in the appendix and that fact is reported in 865 F.2d 255.

The order of the District Court dated June 25, 1986, is not reported, but does appear in the appendix. However, the District Court's intermediate order, dated June 21, 1984, approving and adopting the Magistrate's report appears in the appendix and was published in U.S. v. 298.25 Acres of Land; 587 F. Supp. 1510 (1984).

JURISDICTION

With leave of the Court of Appeals for the Fourth Circuit, a petition for rehearing was filed and the same was denied on January 10, 1980; and this petition was filed within ninety (90) days of that date. The decision of the Court of Appeals was rendered on December 8, 1988, affirming the order of the District Court dismissing Civil Action No. 75-0061.

This Court's jurisdiction is involved under 28 U.S.C. Section 1254 (1).

RULES INVOLVED

Federal Rules of Civil Procedure

Rule 21. Misjoinder and Non-Joinder of Parties

Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.

Rule 41. Dismissal of Actions

* * * * *

(b) **Involuntary Dismissal: Effect Thereof.** For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against him. After the plaintiff, in an action tried by the court without a jury, has completed the presentation of his evidence the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Rule 52(a). Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 19, operates as an adjudication upon the merits.

Rule 71A. Condemnation of Property

(a) **Applicability of Other Rules.** The Rules of Civil Procedure for the United States District Courts govern the procedure for the condemnation of real and personal property under the power of eminent domain, except as otherwise provided in this rule.

(b) **Joinder of Properties.** The plaintiff may join in the same action one or more separate pieces of property, whether in the same or different ownership and whether or not sought for the same use.

(c) **Complaint.**

(1) *Caption.* The complaint shall contain a caption as provided in Rule 10(a), except that the plaintiff shall name as defendants the property, designated generally by kind, quantity, and location, and at least one of the owners of some part of or interest in the property.

(2) *Contents.* The complaint shall contain a short and plain statement of the authority for the taking, the use for which the property is to be taken, a description of the property sufficient for its identification, the interests to be acquired, and as to each separate piece of property a designation of the defendants who have been joined as owners thereof or of some interest therein. Upon the commencement of the action, the plaintiff need join as defendants only the persons having or claiming an interest in the property whose names are then known, but prior to any hearing involving the compensation to be paid for a piece of property, the plaintiff shall add as defendants all persons having or claiming an interest in that property whose names can be ascertained by a reasonably diligent search of the records, considering the character and value of the property involved and the interests to be acquired, and also those whose names have

otherwise been learned. All others may be made defendants under the designation "Unknown Owners." Process shall be served as provided in subdivision (d) of this rule upon all defendants, whether named as defendants at the time of the commencement of the action or subsequently added, and a defendant may answer as provided in subdivision (e) of this rule. The court meanwhile may order such distribution of a deposit as the facts warrant.

(3) *Filing.* In addition to filing the complaint with the court, the plaintiff shall furnish to the clerk at least one copy thereof for the use of the defendants and additional copies at the request of the clerk or of a defendant.

* * * * *

(e) Appearance or Answer. If a defendant has no objection or defense to the taking of his property, he may serve a notice of appearance designating the property in which he claims to be interested. Thereafter he shall receive notice of all proceedings affecting it. If a defendant has any objection or defense to the taking of his property, he shall serve his answer within 20 days after the service of notice upon him. The answer shall identify the property in which he claims to have an interest, state the nature and extent of the interest claimed, and state all his objections and defenses to the taking of his property. A defendant waives all defenses and objections not so presented, but at the trial of the issue of just compensation, whether or not he has previously appeared or answered, he may present evidence as to the amount of the compensation to be paid for his property, and he may share in the distribution of the award. No other pleading or motion asserting any additional defense or objection shall be allowed.

(i) Dismissal of Action.

(1) *As of Right.* If no hearing has begun to determine the compensation to be paid for a piece of property and the plaintiff has not acquired the

title or a lesser interest in or taken possession, the plaintiff may dismiss the action as to that property, without an order of the court, by filing a notice of dismissal setting forth a brief description of the property as to which the action is dismissed.

(2) *By Stipulation.* Before the entry of any judgment vesting the plaintiff with title or a lesser interest in or possession of property, the action may be dismissed in whole or in part, without an order of the court, as to any property by filing a stipulation of dismissal by the plaintiff and the defendant affected thereby; and, if the parties so stipulate, the court may vacate any judgment that has been entered.

(3) *By Order of the Court.* At any time before compensation for a piece of property has been determined and paid and after motion and hearing, the court may dismiss the action as to that property, except that it shall not dismiss the action as to any part of the property of which the plaintiff has taken possession or in which the plaintiff has taken title or a lesser interest, but shall award just compensation for the possession, title or lesser interest so taken. The court at any time may drop a defendant unnecessarily or improperly joined.

(4) *Effect.* Except as otherwise provided in the notice, or stipulation of dismissal, or order of the court, any dismissal is without prejudice.

STATEMENT OF THE CASE

Pursuant to Rule 71A of the Federal Rules of Civil Procedure, the United States of America instituted on March 5, 1975 a civil action, case No. 75-0061-H to acquire the mineral rights to 298.25 acres of land described in tracts No. 550-M and No. 556-M. The complaint listed the owners as Milton Ross, etc., who claim their rights through Hugh and Robert Ross, their common ancestor. Columbia Gas Transmission Corporation and the State of West Virginia were named as additional parties having an interest in the land.

On December 22, 1977 a condemnation proceeding was filed as civil action No. 77-3324-H acquiring mineral lands from Columbia Gas and included in that proceeding was tract No. 552-M. Tract No. 550-M and tract No. 552-M covered the same geographical area.

Pleadings

The Ross Heirs filed their answer in civil action No. 75-0061-H.

Columbia Gas *did not* file an answer in this case—only a disclaimer which reads as follows:

> "Now comes Columbia Gas Transmission Corporation . . . being fully informed, does hereby disclaim and waive any right to the compensation to be paid by the United States of America for the interest of the Heirs of Hugh Ross in tract No. 550-M and in tract No. 556-M by this action.
>
> "It is expressly understood that this disclaimer will in no way or manner prejudice the rights of Columbia Gas Transmission Corporation to its claim of ownership in the mineral estate acquired in tract No. 552-M, civil action No. 77-3324".

Pursuant to this disclaimer, Columbia Gas was dismissed without prejudice.

Consolidation

Because of conflicting claims as to ownership of the minerals, the Court consolidated both actions for the limited purpose of determining the validity or invalidity of an 1879 deed and referred the matter to the magistrate, Jerry D. Hogg.

Report

On January 20, 1984 the magistrate filed his report which drew objections from the Ross Heirs. The objections were leveled against certain findings because no evidence was presented and because the findings exceeded the order of reference.

The court held a hearing on the objections on June 21, 1984. The court ordered that the objections to the magistrate's report were without merit and that the report be approved and adopted in toto.

Publication of Court Order and Report

In early July, 1984 at the request of Columbia Gas and over the objections of the Ross Heirs, the court published, in the Federal Supplement, the magistrate's report and the court's order—United States v. 298.25 Acres of Land, 587 F. Supp. 1510 (1984).

On July 16, 1984 the Ross Heirs filed a motion for reconsideration. At a pretrial conference on August 16, 1984 the attorneys for Columbia Gas and the Ross Heirs agreed that the issue of taxes and payment of same were never discussed at the magistrate's first hearing. On October 3, 1984 the court denied the motion for reconsideration, but noted that "payment of real estate taxes may be raised in a subsequent hearing".

Trial

A trial for just compensation was held in Huntington, West Virginia from March 26-28, 1985. A jury was impaneled. The government, the plaintiff, and the heirs of Hugh and Robert Ross, some pro se parties and members of another Ross family, defendants, tried the issue of just compensation.

Columbia Gas, a defendant, filed no answer—only a disclaimer—and took no active part in the trial.

On March 28, 1985 a jury verdict was rendered. Just compensation was found to be $63,000.00.

On April 11, 1985 the court issued a judgment order: upon jury trial the plaintiff to pay into the registry of the court the sum of $63,000.00 less any amount previously deposited with the court plus interest to be determined at a later date.

Magistrate's (Second) Report-Recommendation

On April 16, 1985 the court issued an order of reference to Magistrate Jerry D. Hogg who was "designated and authorized to review and consider the issues herein presented, including a determination of any title questions and distributions of the jury award and to submit his proposed findings of fact and recommendation for the disposition by the judge."

On July 8, 1985 the magistrate's second report-recommendation was filed. The Ross Heirs filed objections thereto. The court took no action on either the magistrate's report or the Ross Heirs' objection.

Magistrate's (Third) Report-Recommendation

On January 28, 1986 the court appointed a title expert, William Hamb, to conduct an investigation to render an opinion as to the ownership of aforesaid tracts. The Hamb report concluded that only Columbia Gas had valid title to the subject tracts and was therefore the only party entitled to compensation. The Ross Heirs filed objection to the Hamb report.

Pursuant to the court's order of reference (dated March 28, 1986), Magistrate Jerry D. Hogg conducted on May 19, 1986 an evidentiary hearing to determine ownership of aforesaid tracts and to allow the parties to cross-examine William Hamb, the title expert. The magistrate's report-recommendation was to adopt the report of William Hamb and its conclusions as correct and to find that the legal title to the property which is the subject of the civil action is held by Columbia Gas Transmission Corporation and Columbia Coal Gasification Corporation. The Ross Heirs filed objections to the magistrate's report-recommendations.

The Court Order

On June 25, 1986 the court order was issued:

> "It is therefore ordered that Columbia Gas Transmission Corporation and/or Columbia Coal Gasification Corporation are the owners of the property described herein.
>
> "Accordingly it is hereby ordered that civil action No. 75-0061-H be dismissed with prejudice and stricken from the docket of this court. . ."

REASONS FOR GRANTING THE WRIT

Pursuant to Rule 19 of the Revised Rules of the United States Supreme Court, the Fourth Circuit Court of Appeals has rendered a decision "which had so far departed from the accepted and usual course of judicial proceedings, . . . or so far sanctioned such a departure by the lower court, as to call for an exercise of this court's power of supervision."

The Fourth Circuit Court of Appeals affirmed the order of the District Court of the Southern District of West Virginia— ". . . civil action No. 75-0061-H *be dismissed with prejudice and stricken from the docket of this court.*"—which order is in direct conflict with Rule 71A (i) (3,4) of the Federal Rules of Civil Procedure. (Emphasis added.)

It is requested that this court exercise its supervisory powers to clarify the use of Rule 71A in conjunction with the Rules of Civil Procedure.

In the case at bar, after Columbia Gas filed its disclaimer, the Ross Heirs expended Two Hundred Thousand Dollars ($200,000.00) in geological, engineering, core drilling expenses, bond costs, expert witness fees in respect to coal and gas reserves, plus an additional amount of over Eighty Thousand Dollars ($80,000.00) for real estate taxes from 1936 to the present—all in an effort to be in a ready posture to try the issue of just compensation.

These costs were a great, heavy financial burden to the Ross Heirs, humble but proud people, who number approximately nine hundred (900) and who live in at least fifteen states from the east coast to the west coast. The correlation of these efforts was stupendous and it culminated in the redemption of the land by paying back taxes. The State of West Virginia granted the Redemption Certificates as there was no other listing on

the Land Books and the Ross Heirs filled all the requirements. It is to be noted that Columbia Gas, though claiming the land, never entered their name on the land books and they claim ownership through payments to the Board of Public Works, which type of payment does not conform to the West Virginia Constitution.

In addition to the Ross expenses, the United States Government expended Thirty-two Thousand, Five Hundred Dollars ($32,500.00) for a title expert; Nine Thousand Five Hundred Dollars ($9,500.00) for core drilling information, unknown sums for expert witnesses in the geological fields of coal and gas reserves, per diem and travel expenses, plus jury fees and witness fees. The core drilling expenses of Nine Thousand, Five Hundred Dollars ($9,500.00) covered a purchase of core drilling information from the Ross Heirs who paid approximately One Hundred Thirty Thousand Dollars ($130,000.00) for this information.

All of these expenses shall go for nought with the striking of the case from the docket and the incurring of additional expenses to retry this case.

The purpose of Rule 71A provides "a uniform procedure" for condemnations in the Federal Court. To correlate the special rule of the condemnation procedure, certain rules of civil procedure are altered or changed and other rules are rendered ineffectual. Accordingly, Rule 71A (i) (1-4) governs the dismissal of actions and thus renders Rule 41 of the Civil Rules of Procedure ineffectual (See 71A (a)). However, the court still has the power under Rule 21 of the Civil Rules to drop any defendant who is unnecessary or is improperly joined. Since Rule 71A (i) (1-4) governs the dismissal of condemnation proceedings, the Fourth Circuit Court of

Appeals' action of affirming the District Court's order to strike the case from the docket is in error. Pursuant to Rule 71A, the court has no authority to dismiss when the plaintiff has taken title to the land; just compensation was fixed by a jury; and a trial had; and the court issued its order to pay the award of just compensation into court. The matter remains as a completed case, however, the court may dispose of defendants unnecessarily and improperly joined.

Pursuant to Rule 71A (b), the District Court of the Southern District of West Virginia had the power to join the two properties in one action, but it elected to consolidate the two cases, 75-0061-H and 77-3324-H, for limited purposes and then try two separate cases. Since there were two conflicting claimants—Columbia Gas and the Ross Heirs in civil case 75-0061-H and one claimant, Columbia Gas, a named defendant, in 77-3324-H, Columbia Gas elected to disclaim the proceeds in case No. 75-0061-H and to preserve its rights in No. 77-3324-H. Columbia Gas failed to file an answer in civil action No. 75-0061-H, but the Ross Heirs filed their answer therein.

Under Rule 71A (e) Columbia Gas waived "all defenses and objections not so presented . . .", and pursuant to its disclaimer refused to take an active part in the trial of case No. 75-0061-H.

The Rule of 71A (e) reads: ". . . No other pleading or motion asserting any additional defense or objection shall be allowed." The disclaimer is barred by this statement.

Under West Virginia law

> "A disclaimer *is not a* plea, but a *formal refusal by the defendant to join issue as to all or part of the land claimed by plaintiff.*" *Pardee v. Johnston*, 70 W. Va. 347, 355, 74 S.E. 721. (Emphasis added.)

> "A defendant in an action of ejectment to avoid the expense of litigation relative to land *to which he makes no claim may by formal deed or entry of record disclaim any interest therein,* and thus be *relieved from such expense,* or, if a part *of the land claimed by plaintiff in his declaration is likewise claimed by the defendant, defendant may disclaim that part in which he has no interest, and plead not guilty as to the residue.*" *Wilson v. Caldwell,* 98 W. Va. 661, 666, 127 S.E. 497; *Wilson v. McCoy,* 93 W. Va. 667, 671, 117 S.E. 473. *See also Norfolk & W. Railway Co. v. Christian,* 83 W. Va. 701, 99 S.E. 13; *Fisher's Heirs v. Camp's Heirs,* 26 W. Va. 576. (Emphasis added.)

Contrary to the opinion of the Fourth Circuit Court of Appeals, the disclaimer filed by Columbia Gas may not have barred Columbia's claim, but even after consolidation of the two cases for limited purposes and before and during trial, it refused to take an active part in the case and refused to take the proceeds which were then held in abeyance pending the hearing on the conflict between the two claimants.

From the inception of the case until the jury verdict, the District Court of the Southern District of West Virginia never made a final order in respect to the rights of the conflicting claimants. The court allowed the Ross Heirs to fight the jury trial at great expense and then decided to determine the ownership of the award of just compensation. Striking the case from the files is a misapplication of civil Rule 41 and contrary to Rule 71A.

Pursuant to Rule 71A (1) (4), *any dismissal is without prejudice* which is contrary to the language in the order of the District Court and the affirming action of the Fourth Circuit Court of Appeals by dismissing with prejudice.

CONCLUSION

For these reasons, a writ of certiorari should issue to review judgment and opinion of the Fourth Circuit.

Respectfully submitted,

LINCOLN R. THORMAN
28790 Chagrin Boulevard
Cleveland, Ohio 44122
(216) 464-4227
Attorney for Petitioner and
Counsel of Record

Date: April, 1989

APPENDIX

DECISION OF THE COURT OF APPEALS FOR FOURTH CIRCUIT

(Decided December 8, 1988)

[NOT RECOMMENDED FOR FULL-TEXT PUBLICATION]

No. 86-2114

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus

298.25 ACRES OF LAND, more or less, situate in Wayne County, West Virginia;
MILTON ROSS, et al and unknown owners,
Defendants-Appellants,

COLUMBIA GAS TRANSMISSION CORPORATION,
Intervenor-Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA, AT HUNTINGTON.
DENNIS RAYMOND KNAPP, SENIOR DISTRICT JUDGE.
(CA-75-0061 H).

Argued: October 5, 1988

Before MURNAGHAN, WILKINSON, and WILKINS,
Circuit Judges.

Lincoln Raphael Thorman; James Allan Colburn (Baer, Robinson & Colburn on brief) for Appellant. H. L. Snyder (H. H. Roberts, Wm. Roy Rice, Johnny M. Knisely II on brief); Robert L. Klarquist (Myles E. Flint, Deputy Assistant Attorney General; David A. Faber, United States Attorney; Gary E. Pullin, Assistant United States Attorney; Charles J. Brennan, Maria A. Iizuka, Department of Justice on brief) for Appellees.

PER CURIAM:

This is a condemnation action by the United States involving two tracts of land in West Virginia. Litigated for over ten years, there is no dispute on appeal as to the amount of the award; the only issue is who should receive it. The two principal contenders for title to the condemned tracts are (1) the Columbia Gas Transmission Corporation and the Columbia Coal Gasification Corporation [collectively "Columbia Gas"], and (2) a number of individuals claiming under the rights of their common ancestors Hugh and Robert Ross [collectively the "Ross Heirs"]. The district court approved a magistrate's report holding that Columbia Gas owned the two tracts. The court then dismissed the action. The Ross Heirs have filed this appeal, contending that the magistrate erred in his determination and that, in any event, a previous disclaimer by Columbia Gas and prior rulings of the district court invalidated Columbia Gas' title claim.

I

On March 5, 1975, the United States commenced an action in condemnation, No. 75-0061, to acquire the coal and mineral rights in two tracts of land (Tract Nos. 550M and 556M), approximately 298.25 acres, for the East Lynn Reservoir Project in West Virginia. The defendants included the Ross Heirs and Columbia Gas. A judgment order was entered condemning the property.

Two years later, the United States brought another action, No. 77-3324, to acquire the mineral interests in approximately 16,286.08 acres (Tract 552M) for the same project. The geographic boundary of Tract 552M encompassed Tract 550M. On February 18, 1982, Columbia Gas filed a disclaimer as to

> any right to the compensation to be paid by the United States of America for the interests of the heirs of Hugh Ross taken in Tracts 550M and 556M by this action.
>
> It is expressly understood that this Disclaimer will in no way or manner prejudice the rights of Columbia Gas Transmission Corporation to its claim of ownership in the mineral estate acquired in Tract No. 552M, Civil Action No. 77-3324.

The district court then dismissed Columbia Gas from 75-0061 without prejudice to its claim of ownership in 77-3324.

On March 2, 1983, the district court consolidated the two actions to determine the validity of an 1879 deed relevant to both. The court referred the matter to a magistrate (Magistrate Hogg). The magistrate held a hearing and issued a report, upholding the validity of the deed (and thereby the validity of the Columbia Gas chain of title). The district court conducted a *de novo* review of the record and issued an order finding all objections filed without merit and approving the report. *United States v. 298.25 Acres of Land*, 587 F. Supp. 1510 (1984).

A trial was conducted from March 26-28, 1985, and a jury determined just compensation in 75-0061 to be $63,000. The district court then referred the matter to Magistrate Hogg to determine title to the subject property and distribution of the jury award. Guided by *United States v. 298.25 Acres, supra*, the magistrate

determined that the issue of land ownership was "moot" since the Ross Heirs had lost standing to challenge Columbia Gas' title.

On January 28, 1986, the district court, apparently to resolve all questions of title, appointed an attorney, William E. Hamb, to determine ownership of the condemned property in both 75-0061 and 77-3324. Mr. Hamb filed a report concluding that only Columbia Gas had valid title to the subject tracts and was therefore the only party entitled to compensation. A hearing was subsequently conducted before Magistrate Hogg, at which time evidence was presented and Mr. Hamb was cross-examined by both Columbia Gas and the Ross Heirs. On June 2, 1986, Magistrate Hogg filed a report recommending that Mr. Hamb's findings be approved. He found that "Mr. Hamb's report and testimony, other evidence introduced at said hearing, and the argument, oral and by submitted brief, overwhelmingly support the conclusion that Columbia Gas Transmission Corporation and Columbia Coal Gasification Corporation possess legal title to the property which is the subject of these civil actions." Magistrate's Report at 2. The magistrate specifically made no recommendation as to whether Columbia Gas had disclaimed ownership interest in Tracts 550M and 556M.

The district court issued an order on June 25, 1986, adopting the Magistrate's Report and dismissing No. 75-0061 with prejudice. This appeal followed.

II

The Ross Heirs would first have us find error in the opinions of the district court, the magistrate and the appointed title expert, all holding that Columbia Gas has title to the condemned property. After reviewing the

record and the opinions below, we can find no merit in the Ross Heirs' objections. The substantive arguments raised by the Ross Heirs on appeal were fully considered and rejected at each stage of the proceedings below. The reasoning contained in the Hamb Report is persuasive and effectively disposes of all disputed issues. The magistrate and district court did not err in adopting it.

Furthermore, prior rulings of the district court and the February 18, 1987 disclaimer filed by Columbia Gas do not bar Columbia Gas' claim. The prior "rulings" pointed to by the Ross Heirs, where they exist, were never intended by the court to have preclusive effect. As to the disclaimer, Columbia Gas specifically disclaimed its interest in Civil Action No. 75-0061 *subject to* preserving its rights in Civil Action No. 77-3324. Once the cases were consolidated, the disclaimer was no longer binding and Columbia Gas had every right to participate in the action. In any event, a disclaimer by Columbia Gas does not automatically vest title in the Ross Heirs. They had no interest. The disclaimer did not purport to create any. The alternative of awarding to the United States government its own condemnation compensation, while it retains title, is devoid of logic or appeal.

The order of the district court dismissing Civil Action No. 75-0061 is

AFFIRMED.[1]

[1] The Ross Heirs' motions to substitute their reply brief and for leave to file a separate brief are hereby granted.

ORDER OF THE UNITED STATES DISTRICT COURT

(Entered June 25, 1986)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON DIVISION

UNITED STATES OF AMERICA,

vs.

298.25 ACRES OF LAND, et al.

Civil Action No. 75-0061-H

and

UNITED STATES OF AMERICA,

vs.

16,286.08 ACRES OF LAND, et al.

Civil Action No. 77-3324-H

ORDER

The above-styled consolidated actions came on to be further heard upon the Report-Recommendation of the United States Magistrate, Jerry D. Hogg, the objections and exceptions taken thereto, the various pleadings and papers filed herein, all the evidence on the issue of title taken and presented by the parties, and the argument of counsel. Whereupon, the Court made a full and complete examination of the Report-Recommendation, considered

the objections thereto, and conducted a de novo examination of the record, particularly of those portions that were subject to exceptions by the parties.

Accordingly, the Court finds that the Magistrate's Report-Recommendation as to the title and ownership of the property involved in these proceedings is correct and must be approved and confirmed.

It is therefore ORDERED that Columbia Gas Transmission Corporation and/or Columbia Gasification Corporation are the owners of the property described herein.

Accordingly, it is hereby ORDERED that Civil Action No. 75-0061-H be dismissed with prejudice and stricken from the docket of this court.

The Clerk is directed to mail a certified copy of this order to counsel of record herein and to all parties appearing pro se herein.

Dated: June 24, 1986

/s/ DENNIS R. KNAPP,
Judge

REPORT-RECOMMENDATION OF THE MAGISTRATE OF THE UNITED STATES DISTRICT COURT

(Entered May 29, 1986)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

298.25 ACRES OF LAND, more or less, situate in Wayne County, State of West Virginia, and Milton Ross, et al,

Defendants.

Civil Action No. 75-0061-H
Tract Nos. 550M and 556M

UNITED STATES OF AMERICA,

Plaintiff,

v.

16,286.08 ACRES OF LAND, more or less, situate in Wayne County, State of West Virginia, and Columbia Gas Transmission Corporation, et al,

Defendants.

Civil Action No. 77-3324-H

REPORT-RECOMMENDATION

JERRY D. HOGG, *United States Magistrate*

By order entered March 28, 1986, this matter was referred to the undersigned magistrate by the Honorable Dennis R. Knapp, United States District Judge, for the purpose of conducting an evidentiary hearing to determine the ownership of the property which is the subject of these civil actions.

William E. Hamb, Attorney at Law, was appointed by Judge Knapp by order entered January 28, 1986, for the purpose of conducting a search of the title to the property, which is the subject of these civil actions, and to render his opinion as to the ownership of said property and to certify to the Court the party or parties who, in his opinion, are entitled to just compensation. Mr. Hamb submitted his report on May 2, 1986.

On May 19, 1986, the evidentiary hearing was held before the undersigned magistrate. At this hearing, Mr. Hamb presented himself for cross-examination. He was cross-examined by attorneys representing various competing interests. Mr. Hamb's conclusion was that title to the property, which is the subject of these civil actions, is held by Columbia Gas Transmission Corporation and Columbia Coal Gasification Corporation and they are the sole entities entitled to just compensation.

It is the finding of the undersigned magistrate that Mr. Hamb's report and testimony, other evidence introduced at said hearing, and the argument, oral and by submitted brief, overwhelmingly support the conclusion that Columbia Gas Transmission Corporation and Columbia Coal Gasification Corporation possess legal title to the property which is the subject of these civil actions.

It is accordingly

RECOMMENDED that the District Court adopt Mr. Hamb's report and its conclusions as correct and to find that the legal title to the property, which is the subject of these civil actions, is held by Columbia Gas Transmission Corporation and Columbia Coal Gasification Corporation.

The undersigned magistrate makes no finding or recommendation with regard to whether Columbia Gas Transmission Corporation and Columbia Coal Gasification Corporation have disclaimed ownership interest in Tracts 550M and 556M.

Pursuant to Rule 4(b), Local Rules of Practice and Procedure Before United States Magistrates, this REPORT-RECOMMENDATION of the United States Magistrate is this date filed with the Clerk of this court. The United States Magistrate has directed the Clerk to mail certified copies of the REPORT-RECOMMENDATION by certified mail, return receipt requested, to counsel of record and to all *pro se* litigants who have provided the Clerk's office with their names and addresses.

A copy of this REPORT-RECOMMENDATION has been delivered to the Honorable Dennis R. Knapp.

The parties are hereby advised that any objection to such REPORT-RECOMMENDATION must be in writing and must be filed within ten (10) days from the date of service of a copy hereof with the Clerk, United States District Court, P. O. Box 1570, Huntington, West Virginia 25714, with copies to the Judge and Magistrate which shall specifically identify the portions of the REPORT-RECOMMENDATION to which objection is made and the basis for such objection. The Judge shall

make a de novo determination of those portions of the REPORT-RECOMMENDATION to which objection is made in accordance with the provisions of 28 U.S.C. §636(b)(1) and Rule 4(b), Local Rules of Practice and Procedure Before United States Magistrates.

Dated: May 29, 1986.

/s/ JERRY D. HOGG
United States Magistrate

ORDER OF THE UNITED STATES DISTRICT COURT

(Entered March 28, 1986)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON DIVISION

UNITED STATES OF AMERICA,

vs.

298.25 ACRES OF LAND, etc.,

Civil Action No. 75-0061

and

UNITED STATES OF AMERICA,

vs.

16,286.08 ACRES OF LAND, etc.

Civil Action No. 77-3324

ORDER

For reasons appearing to the Court, it is hereby ORDERED that this matter be referred to Honorable Jerry D. Hogg, United States Magistrate, for the purpose of conducting an evidentiary title hearing to determine the ownership of the property which is the subject of these civil actions. It is further ORDERED

that said hearing be set for May 12, 1986, at 9:30 a.m., before Magistrate Hogg at the United States Courthouse in Charleston, West Virginia.

The Clerk is directed to mail certified copies of this order to counsel of record herein, to all parties appearing pro se, to the Honorable Jerry D. Hogg, and to William E. Hamb.

Dated: March 27, 1986.

/s/ DENNIS R. KNAPP
Judge

REPORT-RECOMMENDATION OF THE MAGISTRATE OF THE UNITED STATES DISTRICT COURT

(Filed July 8, 1985)

Civil Action No. 75-0061

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON

UNITED STATES OF AMERICA,
Plaintiff,

vs.

298.25 Acres of Land, *et al,*
Defendants.

REPORT-RECOMMENDATION

JERRY D. HOGG, *United States Magistrate*

By order entered on April 16, 1985, by the Honorable Dennis R. Knapp, United States District Judge, this action was assigned to the undersigned magistrate, who was designated and authorized to review and consider the issues presented in said action, including a determination of any title questions and the distribution of the jury award, and to submit his proposed findings of fact and recommendation for the disposition thereof to the District Court.

This action and Civil Action No. 77-3324 were consolidated by order entered February 25, 1983, for the limited purpose of determining the validity of an 800-acre severance deed from A. A. Low, et al, to Samuel W. Ross, et al, dated September Commission of Wayne County, West Virginia, in Deed Volume S at page 552. The consolidated actions were referred to the undersigned magistrate as a Special Master to determine and report on the validity of said 1879 severance deed.

On January 20, 1984, the undersigned magistrate, as a Special Master, reported to the District Court and, in that Report, found that the 800-acre 1879 severance deed known as the "Low Severance Deed" was a valid deed, that Columbia Gas Transmission Corporation, as a remote successor to A. A. Low, et al, had proved its title to the minerals under the 800-acre tract, that the Ross Heirs' claims against Columbia ownership were without merit, including their claim of tax redemption of 5,700 acres of minerals alleged to have been forfeited in the name of Susan A. Joice.

The Ross Heirs objected to the said magistrate's Report of January 20, 1984. After conducting a de novo review of the record, the District Court adopted the report in toto as its own. A Motion to Reconsider, filed on or about July 11, 1984, was denied by order dated October 3, 1984. In that order, the Court noted that the question concerning the payment of real estate taxes by Columbia Gas may be raised in subsequent proceedings.

With regard to the payment of real estate taxes left open in the October 3, 1984, order, the Ross Heirs do not contend that Columbia Gas has not paid ad valorem taxes on the minerals in question, but contend that, since 1946, Columbia Gas should have entered all coal and gas reserves, except for well heads, in the Land

Books of Wayne County as undeveloped coal and gas reserves not immediately connected with the property of Columbia Gas, as a public service company under West Virginia Code §11-6-1, *et seq.* Columbia Gas's position is that it has operated gas wells on the 800 acres for decades and has regularly paid taxes on the property.

It is not necessary for this legal question to be decided because it is moot.

The Ross Heirs have based their claim in this regard on the fact, pursuant to West Virginia Code §11A-4-39, they redeemed the Joice lands, which were derived from the "Seashole" grant and, in 1877, sold by the Sheriff to the State of West Virginia for delinquent taxes. However, on June 25, 1984, two weeks before filing their Motion for Reconsideration of the District Court's order adopting the Magistrate's Report, the Ross Heirs voluntarily surrendered their Certificate of Redemption and asked for their money ($64,751.08) back. The Auditor refunded the money. By virtue of this refund, the Ross Heirs have lost their standing to claim that the property belonged to them because Columbia Gas had not properly paid its taxes. That question is now moot.

Therefore, it is

RECOMMENDED that the District Court's order, dated October 3, 1984, denying the Ross Heirs' Motion for Reconsideration be considered the final order of the District Court with regard to its affirmance of the Report of the undersigned magistrate dated January 20, 1984.

If this REPORT-RECOMMENDATION is adopted by the District Court, it is suggested that, in its order adopting this REPORT-RECOMMENDATION, the District Court direct that anyone having claims in this

action against the 298.25 acres (Tracts Nos. 550M and 556M), which claims are not inconsistent with prior orders of the District Court, or which claims involve the section of property upon which Columbia Gas Transmission Corporation has filed a disclaimer, which property coincides with the boundaries of Tracts Nos. 556M, 557M, and 550M, except for a 5/11th interest designated in Civil Action No. 77-3324 as Tract No. 552M, which tract represents a 5/11th interest that is coterminous with Tract No. 550M, file those claims, along with sufficient explanation of their validity, by a day certain so that the jury award in this case may be properly apportioned. The proper apportionment of such monies is reserved for a later Report-Recommendation.

Pursuant to Rule 4(b), Local Rules of Practice and Procedure Before United States Magistrates, this REPORT-RECOMMENDATION of the United States Magistrate is this date filed with the Clerk of this court. The United States Magistrate has directed the Clerk to mail certified copies of the REPORT-RECOMMENDATION by certified mail, return receipt requested, to plaintiff's counsel; Columbia Gas Transmission Corporation; all counsel of record for the Ross Heirs; and to Georgia Roberts, Box 42, Hidden Valley, Chapmanville, West Virginia 25508, a party without counsel.

The Magistrate has delivered a copy of this REPORT-RECOMMENDATION to the Honorable Dennis R. Knapp.

The parties are hereby advised that any objection to such REPORT-RECOMMENDATION must be in writing and must be filed within ten (10) days from the date of service of a copy hereof with the Clerk, United States District Court, P.O. Box 1570, Huntington, West

Virginia 25714, with copies to the Judge and Magistrate which shall specifically identify the portions of the REPORT-RECOMMENDATION to which objection is made and the basis for such objection. The Judge shall make a de novo determination of those portions of the REPORT-RECOMMENDATION to which objection is made in accordance with the provisions of 28 U.S.C. §636(b)(1) and Rule 4(c), Local Rules of Practice and Procedure Before United States Magistrates.

DATED: July 8, 1985.

/s/ JERRY D. HOGG
United States Magistrate

ORDER OF THE UNITED STATES DISTRICT COURT

(Entered April 16, 1985)

Civil Action No. 75-0061

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

vs.

298.25 ACRES OF LAND, *et al.*,
Defendants.

O R D E R

It is hereby ORDERED that this action be referred to the Honorable Jerry D. Hogg, United States Magistrate, who is hereby designated and authorized to review and consider the issues herein presented, including a determination of any title questions and the distribution of the jury award, and to submit his proposed findings of fact and recommendations for the disposition thereof to this court.

In the conduct of these proceedings, the magistrate may, if the same be indicated, require additional pleadings, records or materials to be submitted, conduct any required hearings, including evidentiary hearings on factual issues raised, and do any and all other things deemed proper and necessary for a final determination of

the issues raised in said complaint. All acts, proceedings and recommendations by the magistrate for the disposition thereof shall be made pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(B) and the Magistrates Local Rules of Practice and Procedure.

The Clerk is directed to forward certified copies of this order to counsel of record herein and to Jerry D. Hogg, Magistrate.

DATED: April 16, 1985

/s/ DENNIS R. KNAPP
Judge

JUDGMENT ORDER OF THE UNITED STATES DISTRICT COURT

(Entered April 11, 1985)

Civil Action No. 75-0061

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

vs.

298.25 ACRES OF LAND, *et al.*,
Defendants.

JUDGMENT ORDER

This action came on for trial before the Court and a jury, Honorable Dennis R. Knapp, District Judge, presiding, and the issues having been duly rendered its verdict, it is

ORDERED and ADJUDGED that the plaintiff pay into the registry of the Court the sum of $63,000, less any amount previously deposited with the Court, plus interest to be determined at a later date.

The Clerk is directed to mail certified copies of this order to counsel of record herein.

DATED: April 11, 1985

/s/ DENNIS R. KNAPP
Judge

ORDER OF THE UNITED STATES DISTRICT COURT

(Entered October 3, 1984)

Civil Action No. 75-0061
Civil Action No. 77-3324

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON DIVISION

UNITED STATES OF AMERICA,

VS.

298.25 Acres of Land, *et al.*

O R D E R

This matter is presently before the Court on defendants' motion to reconsider its order of June 21, 1984, which affirmed the Report-Recommendation of the United States Magistrate.

After careful consideration, the Court is of the opinion that said motion should be denied. However, the Court notes that the question concerning the payment of real estate taxes by Columbia Gas may be raised in subsequent proceedings.

Accordingly, it is hereby ORDERED that defendants' motion to reconsider the Court's order of June 21, 1984, be denied.

The Clerk is directed to mail certified copies of this order to counsel of record herein.

DATED: October 3, 1984

/s/ DENNIS R. KNAPP
Judge

ORDER OF THE UNITED STATES DISTRICT COURT

(Entered June 21, 1984)

Civil Action No. 75-0061

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON DIVISION

UNITED STATES OF AMERICA,

vs.

298.25 ACRES OF LAND, MORE OR LESS, SITUATE IN WAYNE CO., W.VA., and MILTON ROSS, *et al* and UNKNOWN OWNERS.

O R D E R

After a de novo review of the record as a whole, including the United States Magistrate's Report and the objections filed thereto, it is accordingly ORDERED (1) that the objections to the Report of the Magistrate are without merit; and (2) that the Report of the Magistrate be approved and adopted in toto as the Court's own.

The Clerk is directed to mail certified copies of this order to counsel of record herein.

DATED: June 20, 1984

/s/ DENNIS R. KNAPP
Judge

REPORT OF THE MAGISTRATE OF THE UNITED STATES DISTRICT COURT

(Filed January 20, 1984)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

UNITED STATES OF AMERICA,
Plaintiff,

vs. Civil Action No. 75-0061H
Tract Nos. 550M and 556M

298.25 ACRES OF LAND, MORE OR LESS, SITUATE IN WAYNE COUNTY, STATE OF WEST VIRGINIA, AND MILTON ROSS, ET AL., AND UNKNOWN OWNERS,
Defendants.

UNITED STATES OF AMERICA,
Plaintiff,

vs. Civil Action No. 77-3324H

16,286.08 ACRES OF LAND, MORE OR LESS, SITUATE IN WAYNE COUNTY, STATE OF WEST VIRGINIA, AND COLUMBIA GAS TRANSMISSION CORPORATION, ET AL.; AND UNKNOWN OWNERS,
Defendants.

REPORT

By order entered on February 25, 1983 by Dennis R. Knapp, District Judge, this matter was referred to the undersigned Magistrate for the purpose of determining the validity or invalidity of that certain deed from A. A. Low, et al., to Samuel W. Ross, et al., dated September 10, 1879 (hereinafter referred to as "Low Severance Deed").

The arguments of Columbia Gas Transmission Corporation, (hereinafter referred to as "Columbia Transmission") may be summarized as follows:

1. By mesne conveyances Columbia Transmission is the owner of a large tract of land containing approximately 300,000 acres, more or less, situate in the Counties of Lincoln, Putnam, Cabell, Wayne and Mingo, included as a part thereof a tract of land containing initially 31,000 acres which was granted by the Commonwealth of Virginia to one Samuel Smith, Columbia Transmission's remote predecessor in title, by letter patent bearing date of June 29, 1797.

2. That during the year 1879 and suceeding years, Columbia Transmission's predecessors in title to the said Samuel Smith title conveyed various portions of the surface of the said 31,000 acres, including an 800 acre surface tract conveyed by A. A. Low, et al. (Columbia Transmission's predecessor) to Samuel W. Ross and others, by the aforesaid Deed dated September 10, 1879, as recorded in the aforesaid Clerk's office in Deed Book "S", at page 552 as the Low Severance Deed.

3. That the 800 acre surface tract conveyed by the aforementioned Low Severance Deed includes tracts nos. 550M and 552M.

4. That the Low Severance Deed reserved and excepted from the operation of said deed to the said A. A. Low, et al., substances and oils of every sort and description in and upon said real estate herein described and in every part thereof . . ."

Columbia Transmissions claims that the Low Severance Deed is valid on the basis that:

(a) It was properly executed and acknowledged by the grantors' attorney-in-fact on September 29, 1879;

(b) It was properly recorded in the Office of the Clerk of the County Court on October 24, 1882;

(c) Subsequent outsales by the grantees in the Low Severance Deed that included portions of the aforementioned 800 acre tract frequently mentioned the Low Severance Deed as the source of title and frequently reserved the mineral and mineral rights and privileges as the same had been reserved for the benefit of A. A. Low, et al.;

(d) The validity of said deed remained unchallenged for almost 100 years and any effort to impeach its execution or the certificate of acknowledgement at this date would be contrary to reason and the parties raising this issue at this late date as estopped from contesting the validity of this deed;

(e) Columbia Transmission argues that five (5) ejectment actions which were instituted in 1874 extinguished any color of title as to the Ross Heirs under the Seasole grant or otherwise. Subsequent to the decision in the ejectment actions, James I. Kuhn, under a power of attorney from Low and Aspinwall, executed the Low Severance Deed now

before this Court. Dozens of similar deeds were also executed to other defendants who had been ousted from the Smith grant. These severance deeds granted the surface to the ousted defendants, reserving all minerals and mineral interests in and to the grantors, Low and Aspinwall, Columbia Transmission's predecessor in title. The Fourth Circuit Court of Appeals in *United Fuel Gas Co. v. Dyer,* 185 F.2d 99 (4th Cir. 1950) considered a Low and Aspinwall deed essentially identical with the Low Severance Deed, and upheld it as a valid severance of the surface with the minerals reserved to Low and Aspinwall;

(f) The five (5) ejectment actions settled the issue of superior title and right of possession as between Columbia Transmission's and the Ross Heirs' predecessors in title and is res judicata as to those issues;

(g) Issues concerning tax forfeitures and tax delinquencies and forfeitures and sales to the State occurring before the ejectment suits could have been raised in the ejectment trials and are now barred from being raised by the doctrine of res judicata;

(h) Claims relating to forfeitures and sales to the State are also barred by W. Va. Code §11 A-4-39 which releases all claims by the State regarding unpaid property taxes for tax years preceeding 1936;

(i) The Ross Heirs are estopped from raising the issue of the invalidity of a foreclosure sale in Wyoming County if claiming under the Low Severance Deed, or the issue is barred by res judicata if they do not claim under the Low Severance Deed;

(j) The burden of proving that the 800 acres within the "exclusions" mentioned in the Samuel Smith senior grant of 31,000 acres is the burden of the Ross Heirs by virtue of W. Va. Code §55-4-14(a);

(k) W. Va. Constitution, art. XIII, §3, vests Columbia Transmission with whatever right the Ross Heirs may have forfeited for non-entry during and after the 1950's because of the actual continuous possession of Columbia Transmission for more than ten (10) years under "color or claim of title" and by the fact that Columbia Transmission has paid taxes on the minerals since 1946; and

(l) The Ross Heirs challenge to the validity of the Low Severance Deed is barred by the Statute of Limitations and by the equitable doctrine of laches.

The position of the defendants (hereinafter referred to as the "Ross Heirs") may be summarized as follows:

1. The 800 acre tract described in the Low Severance Deed lies within the Seasole grant of 4,590 acres dated 1846 and the Seasole grant lies within the Smith grant of 31,000 acres through which Columbia Transmission claims.

2. The Smith grant is senior to the Seasol grant, but the owners of the Smith Tract failed to pay taxes and pursuant to the statutes of the State of Virginia the title to the property conveyed by the Seasol grant was transferred to the Commonwealth of Virginia and was subsequently regranted to John Seasole, the predecessor in title to the Ross Heirs.

3. As a result of the regranting procedure a conflict of interest arose between the senior grant and the junior grant creating two (2) chains of title.

4. Since the original owner failed to redeem the title within the statutory period of time, and the title to the property was properly held by the State of Virginia, the Low Severance Deed which depends upon the validity of the Smith grant for its validity, is invalid.

In addition to the claim set out above, the Ross Heirs question the validity of the Low Severance Deed by attacking the deed itself, and make other specific allegations relating to forfeiture for non-entry on the Land Books and sale to the State for nonpayment of taxes.

The arguments of the Ross Heirs attacking the validity of the instrument itself and other arguments are summarized as follows:

1. The Low Severance Deed was not a severance deed but was intended to be a compromise deed, a deed which attempts to settle or compromise conflicting claims to the same property. These deeds are generally executed by both the grantor and the grantee.

2. The Low Severance Deed fails as a compromise deed because the deed lacks the Ross signatures, lacks language describing the issue of compromise and lacks description of the items to be compromised.

3. James I. Kuhn, the agent of the owners who executed the deed, exceeded his authority since he was not given blanket power to sever the minerals from the real estate. He only had power to compromise and settle a claim. If after compromise and settlement was reached, he had instructions and power to reserve the minerals for his principals.

4. The Land Books of Wayne County reveal that the title to the land which contains the property encompassing the 800 acre tract covered by the Low

Severance Deed was forfeited by the owner, Guyandotte Land Company for non-entry on the Land Books.

5. Other related arguments are made claiming that the Low Severance Deed is invalid because various predecessors in title failed to pay taxes, or failed to make an entry on the Land Books pursuant to West Virginia constitution, Article 13, Section 6.

6. The legal title to the land covered by the Low Severance Deed which was forfeited to the State has never been properly redeemed by Columbia Transmission or any of its predecessors in title.

7. The title to the property was also forfeited for non-payment of taxes through the chain of title under the Seasole grant. The Ross Heirs redeemed said property in 1983 and paid the taxes from 1935 through 1982.

Counsel for the Ross Heirs conclude that:

(a) The Low Severance Deed failed as a compromise deed and was not effective as a severance deed because the agent of the owner, as grantor, did not have the authority to execute a severance deed;

(b) The ejectment suit only ousted the Ross defendants from possession of the land since the legal title of the land was in the State of West Virginia, which was not made a party to the suit;

(c) The fact that the Ross Heirs referred back to the Low Severance Deed as a reference point for a legal description does not ratify the giving of the deed;

(d) The 1983 redemption by the Ross Heirs of the title to the property covered by the Low Severance Deed establishes good legal title in them.

A status conference was held in this Court on September 9, 1983. As a result of that status conference this Court ordered that an evidentiary hearing be held on November 1, 1983 regarding the validity or invalidity of the Low Severance Deed. An evidentiary hearing was held on November 1, 1983 and evidence and argument was offered by counsel for Columbia Transmission and by counsel for the Ross Heirs.

After consideration of the arguments presented by counsel and review of the transcript of the evidentiary hearing it is the conclusion of this Court that the Low Severance Deed is a valid deed. In conjunction with this conclusion this Court makes the following findings of fact and conclusions of law:

1. The Low Severance Deed satisfies all of the formal requirements for a valid conveyance.

(a) the parties were competent;

(b) the consideration was sufficient;

(c) the deed is dated, in writing, contains words of conveyance, and the parties are sufficiently identified as grantor and grantee;

(d) the 800 acres of surface is described with reasonable certainty;

(e) the execution and acknowledgement of the deed are proper;

(f) execution by the grantees was not required to make the deed valid;

(g) delivery of the deed was established by the evidence;

(h) acceptance of the deed by the grantees was established by the evidence; and

(i) the agent of the owners, J. I. Kuhn, did not exceed his authority pursuant to his power of attorney in executing the deed.

2. The ejectment actions which began in 1874 extinguished the claims of the six (6) Ross brothers under the Seasole grant.

(a) the ejectment actions were not default judgments as argued by the Ross Heirs;

(b) the issue of superior title and right of possession as between Columbia Transmission's and the Ross Heirs' predecessors in title was decided by the said ejectment suits and the doctrine of res judicata applies;

(c) issues concerning tax forfeitures and tax delinquencies and forfeitures and sales to the State occurring before the ejectment suits could have been raised in the ejectment trials, but are barred by the doctrine of res judicata from being raised now;

(d) even if the claims relating to forfeiture and sales to the State could be raised now they would fail because W. Va. Code §11A-4-39 releases all claims by the State as such regarding unpaid property taxes for tax years preceeding 1936;

(e) the Ross Heirs are estopped from raising the issue of the invalidity of a foreclosure sale in Ohio County of Wayne County land if claiming under the Low Severance Deed, or the issue is barred by res judicata if they do not claim under the Low Severance Deed; and

(f) the burden of proving that the 800 acres within the "exclusions" mentioned in the Samuel Smith senior grant of 31,000 acres was the burden of the Ross Heirs by virtue of W. Va. Code §55-4-14(a).

3. W. Va. Constitution, art. XIII, §3, vests Columbia Transmission with whatever right the Ross Heirs may have forfeited for non-entry during and after the 1950's because of the actual continuous possession of Columbia Transmission for more than ten (10) years under "color or claim of title", and by the fact that Columbia Transmission has paid taxes on the minerals since 1946.

4. The Ross Heirs challenge to the validity of the Low Severance Deed is barred by the Statute of Limitations and by the equitable doctrine of laches.

(a) W. Va. Code §55-2-1 requires that the Low Severance Deed must have been challenged within ten (10) years of the recording of the Low Severance Deed on October 24, 1882; and

(b) a delay of over one hundred (100) years is inexcusable and the claim of the Ross Heirs is also barred by the doctrine of laches.

It is accordingly the finding of this Court, acting as Special Master by reference from District Judge Dennis Knapp, that the 1979 deed referred to herein as the Low Severance Deed is a valid deed.

Pursuant to Rule 5 of the Local Rules of Practice and Procedure Before United States Magistrates, and to Rule 53(e) of the Federal Rules of Civil Procedure, this Report of the United States Magistrate, as Special Master, is this date filed with the Clerk of this Court, along with a transcript of the proceedings and of the evidence and the original exhibits.

The parties are hereby advised that any objection to such Report must be in writing and must be filed, within ten (10) days from the date of service of a copy hereof, with the Clerk, United States District Court, P. O. Box

2546, Charleston, West Virginia, 25329, with copies thereof to the other parties, to the Judge and to the Magistrate which shall specifically identify those portions of the Report to which objection is made and the basis for such objection. Application to the Court for action upon the Report and upon objections thereto shall be by motion and upon notice as prescribed in Rule 6(d) of the Federal Rules of Civil Procedure. The Court after hearing may adopt the Report or may modify it or may reject it in whole or in part or may require further evidence or may recommit it with instructions.

DATED: January 20, 1984

/s/ JERRY D. HOGG
U. S. Magistrate

ORDER OF THE MAGISTRATE OF THE UNITED STATES DISTRICT COURT

(Entered September 26, 1983)

Civil Action No. 75-0061H & 77-3324
Tract Nos. 550-M and 556-M

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,
Plaintiff,

v.

298.25 Acres of Land, more or less, situate in Wayne County, State of West Virginia, and Milton Ross, *et al.,* and unknown owners,
Defendants.

ORDER

On the 9th day of September, 1983, came the plaintiff, by counsel, Michael Carey, Glen Eskite and Gary W. Pullin, also came defendants, Ross Heirs, Ishmer Ross, pro se, and other Ross Heirs by counsel, James St. Clair, Lincoln Thorman, and Walt Wagner, also came defendant, Columbia Gas Transmission Corporation, by counsel, H. H. Roberts, W. Roy Rice, and Mark D. Clark, for a status conference in the above-styled action in accordance with Notice dated August 19, 1983 to all counsel of record from Jerry D. Hogg, United States Magistrate. The Court first stated that the only issue before the Honorable Jerry D. Hogg is the validity or invalidity of that certain Deed from A. A. Low, *et al.,*

to Samuel W. Ross, *et al.*, dated September 10, 1879. After listening to suggestions of counsel for plaintiff and defendants, the Court directs that:

(1) A hearing be held on Tuesday, November 1, 1983, at 9:30 a.m. in Magistrate Hogg's Courtroom, Federal Building, Charleston, West Virginia, at which time the Court will hear evidence regarding the validity or invalidity of that certain Deed dated September 10, 1879,

(2) All counsel having any interest in the November 1, 1983, hearing shall meet on October 11, 1983, at 10:00 a.m. in the United States Attorney's office in Charleston, West Virginia, for the purpose of agreeing upon and stipulating the admissibility and/or accuracy of maps and any other evidence which any of the parties desire to present to the Court, and

(3) All parties desiring to file pre-hearing briefs shall file them with this Court and serve a copy upon all counsel of record on or before October 24, 1983.

The Clerk is directed to send certified copies to all counsel.

Entered this 23rd day of September, 1983.

/s/ JERRY D. HOGG
U. S. Magistrate

ORDER OF THE UNITED STATES DISTRICT COURT

(Entered March 2, 1983)

Civil Action No. 75-0061H & 77-3324
Tract Nos. 550M and 556M

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT HUNTINGTON

UNITED STATES OF AMERICA,

Plaintiff,

vs.

298.25 ACRES OF LAND, MORE OR LESS, SITUATE IN WAYNE COUNTY, STATE OF WEST VIRGINIA AND MILTON ROSS, ET AL., AND UNKNOWN OWNERS,

Defendants.

ORDER

This day, the 22nd day of February, 1983, came the defendants, in person and by counsel, pursuant to their Motion for Summary Judgment as to the title to the tract numbers 550M and 556M. The United States of America appeared by counsel and Columbia Gas Transmission Company appeared by counsel to contest the issue with regard to the validity or invalidity of that certain Deed from A. A. Lowe, et al, to Samuel W. Ross, et al, dated 10 September 1879, which was tendered to the Court herein. The Court directed the defendants to file the said Deed in the United States Clerk's office at

Huntington. After argument of counsel, it was resolved that the only issue, at this time, before the Court was the alleged invalidity to that certain 5/11 of tract 550M.

The Court first addressed the matter of the proposed consolidation of that certain civil action styled *United States of America vs. 16,286.08 Acres of Land*, Civil Action No. 77-3324H with the instant case for the purpose of determining the validity of the aforesaid Deed and to enable Columbia Gas Transmission Corporation to address this issue of the alleged invalidity of the said Deed. After due consideration, the Court was of the opinion to grant consolidation of the said Civil Action 77-3324H with and into the instant litigation for the purpose of determining the validity of the said Deed. The Court was further of the opinion to permit Columbia Gas Transmission Corporation to intervene by filing the appropriate pleadings asserting its position with regards to the validity or invalidity of the aforesaid Deed.

The Court was further of the opinion to refer this matter to the United States Magistrate, the Honorable Jerry Hogg, for the purpose of hearing and taking testimony as to the issue of validity or invalidity of the said Deed. The Court was further of the opinion that Columbia Gas Transmission be given a period of twenty (20) days from the entry of the Order to file pleadings asserting its position with regards to this Deed.

It is, therefore, ADJUDGED, ORDERED and DECREED that in Civil Action No. 77-3324H styled *United States vs. 16,286.08 Acres of Land* be and the same be consolidated into this case on the issue of the validity or invalidity of the above described Deed.

It is further ADJUDGED, ORDERED and DECREED that Columbia Gas Transmission Corporation shall have twenty (20) days from the entry of this Order to file the necessary and appropriate pleadings to intervene in this case on the issue of the validity or invalidity of the above described Deed.

It is further ADJUDGED, ORDERED and DECREED that this matter be and the same is hereby referred to the United States Magistrate, the Honorable Jerry Hogg, as Special Master, for the purpose of determining the validity or invalidity of the above described Deed.

Dated this 25th day of February, 1983.

ENTER: /s/ DENNIS R. KNAPP
Judge

ORDER OF THE UNITED STATES DISTRICT COURT DISMISSING COLUMBIA GAS TRANSMISSION CORPORATION

(Entered February 18, 1982)

Civil Action No. 75-0061 H

Tract Nos. 550M and 556M

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT HUNTINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

298.25 ACRES OF LAND, MORE OR LESS, SITUATE IN WAYNE COUNTY, STATE OF WEST VIRGINIA, AND MILTON ROSS, ET AL., AND UNKNOWN OWNERS,

Defendants.

ORDER

On the 7th day of October, 1981, a hearing was held in the above-entitled condemnation proceeding, at which time evidence both oral and documentary was introduced, and upon consideration thereof, it is hereby ORDERED that

1. Milton Ross, John Milton Ross, and J. M. W. Ross is one and the same person and the interest taken by the United States in this proceeding are 1/11ths interest in lieu of 1/12ths interests; and

2. The Contract and Agreement dated November 15, 1882, by and between Lavina Ross and J. I. Culn (also known as J. I. Kuhn), recorded in Deed Book 108, at page 107, on December 2, 1918, in the Wayne County Court Clerk's office, did not convey any title in subject tracts to J. I. Culn.

And it appearing to the Court that pursuant to a Disclaimer Columbia Gas Transmission Corporation (formerly known as United Fuel Gas Company) disclaims and waives any right to the compensation to be paid by the United States for the estates and interests acquired in and to Tracts Nos. 550M and 556M, it is hereby ORDERED that Columbia Gas Transmission Corporation be, and it is hereby DISMISSED from this proceeding without prejudice to its claim of ownership in the mineral estate acquired in Tract No. 552M, Civil Action No. 77-3324.

The Clerk of this Court is hereby directed to forward certified copies of this Order to counsel of record and to the United States Attorney.

DATED this 18th day of February, 1982.

/s/ DENNIS R. KNAPP
United States District Judge

ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT DENYING PETITION FOR REHEARING

(Filed January 10, 1989)

No. 86-2114

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

298.25 Acres of Land, *et al.*,
Defendants-Appellants.

ON PETITION FOR REHEARING

Upon consideration of appellants' petition for rehearing, and motion for leave to file petition out of time,

IT IS ORDERED that the motion to file petition for rehearing out of time is granted and the petition for rehearing is denied.

Entered at the direction of Judge Murnaghan, with the concurrence of Judge Wilkinson and Judge Wilkins.

For the Court

/s/ JOHN M. GREACEN
Clerk

DISCLAIMER OF COLUMBIA GAS TRANSMISSION CORPORATION FILED IN THE UNITED STATES DISTRICT COURT

(Filed February 18, 1982)

Civil Action No. 75-0061 H
Tracts Nos. 550M and 556M

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT HUNTINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

298.25 ACRES OF LAND, MORE OR LESS, SITUATE IN WAYNE COUNTY, STATE OF WEST VIRGINIA, AND MILTON ROSS, ET AL., AND UNKNOWN OWNERS,

Defendants.

DISCLAIMER

COMES NOW Columbia Transmission Corporation (formerly known as United Fuel Gas Company), a corporation, and being fully informed does hereby DISCLAIM and waive any right to the compensation to be paid by the United States of America for the interests of the heirs of Hugh Ross taken in Tracts 550M and 556M by this action.

It is expressly understood that this Disclaimer will in no way or manner prejudice the rights of Columbia Gas Transmission Corporation to its claim of ownership in the mineral estate acquired in Tract No. 552M, Civil Action No. 77-3324.

COLUMBIA GAS TRANSMISSION
CORPORAT, a corporation
By: /s/ (Illegible)
Its Senior Vice President

MARK (Illegible)
Counsel for Columbia Gas
Transmission Corporation

A45 LD-15

CERTIFICATE OF REDEMPTION OF LANDS
STATE OF WEST VIRGINIA

No. 860 L-47

AUDITOR'S OFFICE, CHARLESTON August 8, 19 85

Attys Lincoln R. Thorman and James A. Colburn, Counselors for Hugh
RECEIVED OF & Ross Heirs

Fifty-six Thousand Eight Hundred Sixty - DOLLARS
eight and 67/100----------
in full payment of taxes, interest and costs due, for the years shown, against the land described as:

4700A Mineral Lynn, Laural, Cove & 12 Pole

situate in Wayne County
Stonewall (Formerly Grant) District
Municipal

delinquent or forfeited in name of:

Joice, Susan A. - 1878 to 19 82

Ross, Robert & Hugh - 19 to 19

Ross, Robert & Hugh Heirs 19 to 19

19 to 19

19 to 19

19 to 19

This certificate is a receipt for the money paid and a release of the State's title or claim to the land redeemed for the years shown. Payment is accepted and given by virtue of Section 9, Article 3, Chapter 11-A of the Code of West Virginia, as enacted by Chapter 117, Regular Session 1941, and amendments thereto.

This certificate is issued conditioned on the final payment of check, draft or etc., given in payment thereof and is issued in triplicate, the original filed in Auditor's office; the duplicate (blue) redemptor's copy; and the triplicate (pink) to be recorded, filed and indexed in the County Clerk's Office.

DELINQUENCIES OR FORFEITURES PAID

Year Status Class 3	TAXES State, County, District and Municipal	Interest	Year Status Class	TAXES State, County, District and Municipal	Interest
1936	310.20	1805.36	19 60	341.22	1003.19
37	308.79	1760.10	61	341.22	962.24
~~38~~	~~307.38~~	~~1715.18~~	~~62~~	341.22	928.12
1939	291.87	1593.61	19 63	341.22	887.17
40	297.51	1588.70	64	341.22	846.24
~~41~~	~~277.77~~	~~1449.96~~	~~65~~	341.22	805.28
1942	276.36	1409.44	19 66	341.22	764.33
43	259.44	1291.01	67	341.22	723.49
~~44~~	~~259.44~~	~~1260.88~~	~~68~~	341.22	682.44
1945	248.16	1176.28	19 69	341.22	641.49
46	231.24	1068.33	70	341.22	600.55
~~47~~	~~242.52~~	~~1091.34~~	~~71~~	341.22	559.60
1948	231.24	1012.83	19 72	341.22	518.65
49	250.98	1069.17	73	341.22	477.71
~~50~~	~~314.43~~	~~1301.74~~	~~74~~	341.22	436.76
1951	317.25	1275.25	19 75	341.22	395.82
52	260.85	1017.32	76	341.22	354.87
~~53~~	~~263.67~~	~~996.67~~	~~77~~	341.22	313.92
1954	263.67	965.03	19 78	341.22	272.98
55	263.67	933.39	79	341.22	232.03
~~56~~	~~263.67~~	~~901.75~~	~~80~~	341.22	191.08
1957	276.36	911.99	19 81	341.22	150.14
58	276.36	878.82	82	341.22	109.19
59	341.22	1044.13			

TOTAL TAXES	14482.11
TOTAL INTEREST	42376.56
PUBLICATION FEE	
CERTIFICATE FEE	10.00
TOTAL AMOUNT PAID	56868.67

Glen B Gainer, III
Auditor of West Virginia.

C 64

NOTE—Abbreviations explained under "Status": S.S., Sold to State; Sp., Suspended from sale; Ex.A., Taxes extended by Auditor; Ffd., Forfeited and taxes extended by Auditor.

LD-18

STATE COMMISSIONER OF FORFEITED AND DELINQUENT LANDS' RECORD

of delinquent land sold to the state, forfeited, escheated and waste and unappropriated, compiled from the sheriff's sale records, reports from assessor, county clerk, escheator and county surveyor of record in the State Auditor's Office.

Name in which charged with taxes when sold, escheated, or which should have been charged when forfeited:

Joice, Susan A. - Ross, Robert & Hugh Ross, Robert & Hugh Heirs

Name in which entered on land books after sale or forfeiture, if transferred:

Year of transfer

_____ 19____

_____ 19____

_____ 19____

Estate, quantity, description and location of land:

4700A Mineral Lynn, Laural, Cove & 12 Pole

County Wayne

District Stonewall(Formerly Grant)

Municipality _____

SALE

Tax year for which sold to state 19_____

FORFEITURE

Years: 19 1878 to 19 82 Non-entry

ESCHEAT

Date or year of escheat _____ 19____

WASTE AND UNAPPROPRIATED

Date of report _____ 19____

List of taxes each year of delinquency, or forfeiture, subsequent to the year 1935, with status, value and class. (Taxes, interest, fees, penalties and costs released prior to tax year 1936, Article 4, Chapter 11-A, of the Code of West Virginia, as amended.

Explanation of abbreviations under "Status": S. S. sold to State; S. P., suspended from sale; N. D., not delinquent; Ind., sold to individual at Sheriff's Sale; R. P. S., redeemed from sheriff prior to sale; R. A., redeemed from Auditor; Ex. A., taxes computed and extended by Auditor.

TAXES - STATE, COUNTY, DISTRICT AND MUNICIPAL AT ORIGINAL VALUE AND CLASSIFICATION, AND PUBLICATION FEE, IF ANY						TAXES - STATE, COUNTY, DISTRICT AND MUNICIPAL AT ORIGINAL VALUE AND CLASSIFICATION, AND PUBLICATION FEE, IF ANY					
TAX YEAR	STATUS	VALUE	CLASS	TAXES	PUBLICATION FEE	TAX YEAR	STATUS	VALUE	CLASS	TAXES	PUBLICATION FEE
1936	ExA	14,100	3	310 20		1956	ExA	14,100	3	263 67	
1937				308 79		1957				276 36	
1938				307 38		1958				276 36	
1939				291 87		1959				341 22	
1940				297 51		1960				341 22	
1941				277 77		1961				341 22	
1942				276 36		1962				341 22	
1943				259 14		1963				341 22	
1944				259 14		1964				341 22	
1945				248 16		1965				341 22	
1946				231 24		1966				341 22	
1947				242 52		1967				341 22	
1948				231 24		1968				341 22	
1949				250 98		1969 1970				341 22	
1950				314 43		1971 1972				341 22 341 22	
1951				317 25		1973 1974				341 22 341 22	
1952				260 85		1975 1976				341 22 341 22	
1953				263 67		1977 1978				341 22 341 22	
1954				263 67		1979 1980				341 22 341 22	
1955				263 67		1981 1982				341 22	

REDEMPTION RECORD

From Auditor:

RECEIVED AUG 8 '85
Auditor's Office

Date _____ 19____

To and including year 19 82

From Deputy Commissioner Forfeited and Delinquent Lands:

Date _____ 19____

To and including year 19____

A47

Of

CERTIFICATE OF RE-ENTRY

Date Dec. 23, 1985

State Auditor of West Virginia
State Capitol Building
Charleston 5, West Virginia

I, Lewis Glenn Mills Assessor of Wayne County, West Virginia, by virtue of the authority vested in me by Chapter 11-A, Article 4, Section 8, of the Code, as amended, do hereby certify that the following real estate in _____, District, Stonewall, Municipality, was omitted from the Land Books of said County for the years 1878 to 19___, inclusive, and is, therefore, forfeited for non-entry in the name of:

Susan A. Joice 1878 to 19___, inclusive

Robert Ross & Hugh Ross 1878 to 19___, inclusive

Robert Ross & Hugh Ross Heirs 1878 to 1982, inclusive

See D.B. C-85, 86-89-85, D.B. C. 89 19___ to 19___, inclusive

(Enter on lines above names of persons to whom property should have been assessed for each year during period of omission, and years for which said property should have appeared in each name.)

NAME in which property last appeared on Land Books: Susan A. Joice

YEAR in which property last appeared on Land Books: 1877

Description of property to be re-entered: 4700 A. Mineral, 1000A Mineral, Lynn, Laural, Core and 12 folk

(Enter on lines above, acreage or lot number, etc., and whether fee, surface, coal, oil gas, minerals, etc.)

Pursuant to Chapter 11-A, Article 3, Section 8, of the Code of West Virginia, as amended, I certify the valuation to be $ 3000 1000 2000 - 17000 Class Number 3, for each year for which aforesaid property was omitted from the Land Books.

Approved: [illegible]
CLERK OF THE COUNTY COURT

Lewis G. Mills
ASSESSOR

( ) TO BE CERTIFIED TO CIRCUIT COURT

( ) TO BE REDEEMED FROM STATE AUDITOR
and statement mailed to:

_____

_____

A48

LD-15

CERTIFICATE OF REDEMPTION OF LANDS

STATE OF WEST VIRGINIA

NO. 361 L-47

AUDITOR'S OFFICE, CHARLESTON August 8, 19 85

RECEIVED OF Attys Lincoln R. Thorman and James A. Colburn, Counselors for Hugh & Ross Heirs

Twelve Thousand One Hundred Seven & 58/100 DOLLARS

in full payment of taxes, interest and costs due, for the years shown, against the land described as:

1000 AMineral Lynn, Laural Cove & 12 Pole

situate in Wayne County
Stonewall (Formerly Grant) District
Municipal

delinquent or forfeited in name of:

Joice, Susan A. - Ross, Robert & 19x 1878 to 19 82

Hugh - Ross, Robert & Hugh Heirs 19____ to 19____

19____ to 19____

19____ to 19____

19____ to 19____

19____ to 19____

This certificate is a receipt for the money paid and a release of the State's title or claim to the land redeemed for the years shown. Payment is accepted and given by virtue of Section 9, Article 3, Chapter 11-A of the Code of West Virginia, as enacted by Chapter 117, Regular Session 1941, and amendments thereto.

This certificate is issued conditioned on the final payment of check, draft or etc., given in payment thereof and is issued in triplicate, the original filed in Auditor's office; the duplicate (blue) redemptor's copy; and the triplicate (pink) to be recorded, filed and indexed in the County Clerk's Office.

DELINQUENCIES OR FORFEITURES PAID

Year Status Class	TAXES State, County, District and Municipal	Interest	Year Status Class	TAXES State, County, District and Municipal	Interest
19 36 3	66.00	384.12	19 60	72.60	197.47
37	65.70	374.49	61	72.60	188.76
~~38~~	~~65.40~~	~~364.93~~	~~62~~	~~72.60~~	~~180.05~~
19 39	62.10	339.07	19 63	72.60	171.34
40	59.10	338.02	64	72.60	162.42
~~41~~	~~58.80~~	~~308.50~~	~~65~~	~~72.60~~	~~153.91~~
19 42	55.20	299.88	19 66	72.60	145.20
43	55.20	274.90	67	72.60	136.49
~~44~~	~~52.80~~	~~268.27~~	~~68~~	~~72.60~~	~~127.78~~
19 45	49.20	250.27	19 69	72.60	119.06
46	51.60	227.30	70	72.60	110.35
~~47~~	~~49.20~~	~~232.20~~	~~71~~	~~72.60~~	~~101.64~~
19 48	53.40	215.50	19 72	72.60	92.93
49	66.90	227.48	73	72.60	84.22
~~50~~	~~67.50~~	~~276.97~~	~~74~~	~~72.60~~	~~75.50~~
19 51	55.50	271.35	19 75	72.60	66.79
52	56.10	216.45	76	72.60	58.08
~~53~~	~~56.10~~	~~212.06~~	~~77~~	~~72.60~~	~~49.37~~
19 54	56.10	205.33	19 78	72.60	40.66
55	56.10	198.59	79	72.60	31.94
~~56~~	~~56.10~~	~~191.86~~	~~80~~	~~72.60~~	~~23.23~~
19 57	58.80	194.04	19 81	72.60	
58	58.80	186.98	82	72.60	
~~59~~	~~72.60~~	~~222.16~~			

TOTAL TAXES	3,081.30
TOTAL INTEREST	9.016.28
PUBLICATION FEE	
CERTIFICATE FEE	10.00
TOTAL AMOUNT PAID	12,107.58

Glen B Gainer, III

C 641

Auditor of West Virginia.

NOTE—Abbreviations explained under "Status": S.S., Sold to State; Sp., Suspended from sale; Ex.A., Taxes extended by Auditor; Fid., Forfeited and taxes extended by Auditor.

COPY

STATE COMMISSIONER OF FORFEITED AND DELINQUENT LANDS' RECORD

of delinquent land sold to the state, forfeited, escheated and waste and unappropriated, compiled from the sheriff's sale records, reports from assessor, county clerk, escheator and county surveyor of record in the State Auditor's Office.

Name in which charged with taxes when sold, escheated, or which should have been charged when forfeited:

Joice, Susan A.-Ross, Robert & Hugh-

Ross, Robert & Hugh Heirs

County Wayne

District Stonewall (Formerly Grant)

Municipality

Name in which entered on land books after sale or forfeiture, if transferred:

Year of transfer

_____ 19____

_____ 19____

_____ 19____

SALE

Tax year for which sold to state 19_____

FORFEITURE

Years: 19 1878 to 19 82 Non-entry

ESCHEAT

Date or year of escheat _____ 19____

Estate, quantity, description and location of land:

1000A Mineral Lynn, Laurel, Cove & 12 Pole

WASTE AND UNAPPROPRIATED

Date of report _____ 19____

List of taxes each year of delinquency, or forfeiture, subsequent to the year 1935, with status, value and class. (Taxes, interest, fees, penalties and costs released prior to tax year 1936, Article 4, Chapter 11-A, of the Code of West Virginia, as amended.

Explanation of abbreviations under "Status": S. S. sold to State; S. P., suspended from sale; N. D., not delinquent; Ind., sold to individual at Sheriff's Sale; R. P. S., redeemed from sheriff prior to sale; R. A., redeemed from Auditor; Ex. A., taxes computed and extended by Auditor.

TAXES- STATE, COUNTY, DISTRICT AND MUNICIPAL AT ORIGINAL VALUE AND CLASSIFICATION, AND PUBLICATION FEE, IF ANY						TAXES—STATE, COUNTY, DISTRICT AND MUNICIPAL AT ORIGINAL VALUE AND CLASSIFICATION, AND PUBLICATION FEE, IF ANY					
TAX YEAR	STATUS	VALUE	CLASS	TAXES	PUBLICATION FEE	TAX YEAR	STATUS	VALUE	CLASS	TAXES	PUBLICATION FEE
19 36	ExA	3000	3	66 00		19 56	ExA	3000	3	56 10	
19 37				65 70		19 57				58 80	
19 38				65 40		19 58				58 80	
19 39				62 10		19 59				72 60	
19 40				63 30		19 60				72 60	
19 41				59 10		19 61				72 60	
19 42				58 80		19 62				72 60	
19 43				55 20		19 63				72 60	
19 44				55 20		19 64				72 60	
19 45				52 80		19 65				72 60	
19 46				49 20		19 66 67				72 60 72 60	
19 47				51 60		19 68 69				72 60 72 60	
19 48				49 20		19 70 71				72 60 72 60	
19 49				53 40		19 72 73				72 60 72 60	
19 50				66 90		19 74 75				72 60 72 60	
19 51				67 50		19 76 77				72 60 72 60	
19 52				55 50		19 78 79				72 60 72 60	
19 53				56 10		19 80 81				72 60 72 60	
19 54				56 10		19 82				72 60	
19 66				66 10		19					

REDEMPTION RECORD

From Auditor:

Date RECEIVED Auditor's Office AUG 19 '85

To and including year 19 82

From Deputy Commissioner Forfeited and Delinquent Lands:

Date _____ 19____

To and including year 19____

A51

Cf

CERTIFICATE OF RE-ENTRY

Date July 23, 1985

tate Auditor of West Virginia
tate Capitol Building
harleston 5, West Virginia

I, Lewis Glenn Mills Assessor of Wayne County,
est Virginia, by virtue of the authority vested in me by Chapter 11-A, Article 4, Section 8,
f the Code, as amended, do hereby certify that the following real estate in _____,
istrict, Stonewall, Municipality, was omitted from the Land Books of said County for
he years 1878 to 19___, inclusive, and is, therefore, forfeited for non-entry in the name of:

Susan A. Joice 1878 to 19___, inclusive
Robert Ross & Hugh Ross 1878 to 19___, inclusive
Robert Ross & Hugh Ross Heirs 1878 to 1982, inclusive
See D.B. C-85, 86-88-85, D.B. C. 89
_____ 19___ to 19___, inclusive

Enter on lines above names of persons to whom property should have been assessed for each year
uring period of omission, and years for which said property should have appeared in each name.)

AME in which property last appeared on Land Books: Susan A. Joice
EAR in which property last appeared on Land Books: 1877
escription of property to be re-entered: 4700 A. Mineral, 1000A Mineral,
Lynn, Laural, Coe and 12 pole

Enter on lines above, acreage or lot number, etc., and whether fee, surface, coal, oil gas,
inerals, etc.)

Pursuant to Chapter 11-A, Article 3, Section 8, of the Code of West Virginia, as amended,
certify the valuation to be $14,100 - 3000 1000 4700 acre, Class Number 3, for each year for which
foresaid property was omitted from the Land Books.

pproved: John W. Mullens
CLERK OF THE COUNTY COURT

Lewis G. Mills
ASSESSOR

) TO BE CERTIFIED TO CIRCUIT COURT

) TO BE REDEEMED FROM STATE AUDITOR
and statement mailed to:

_____

_____

A52

A53 LD-15

CERTIFICATE OF REDEMPTION OF LANDS
STATE OF WEST VIRGINIA

No. 362 L-47

AUDITOR'S OFFICE, CHARLESTON August 8, 1985

Attys Lincoln R. Thorman and James A. Colburn, Counselors for Hugh & Ross Heirs

RECEIVED OF

Eight Thousand Six Hundred Sixty-two & 94/100 DOLLARS

in full payment of taxes, interest and costs due, for the years shown, against the land described as:

700 A Mineral Cove Creek

situate in Wayne County
Stonewall (Formerly Grant) District
Municipal

delinquent or forfeited in name of:

Joice, Susan A - Ross, Robert & ~~xxx~~ 1878 to 1985

Hugh - Ross, Robert & Hugh Heirs 19____ to 19____

19____ to 19____

19____ to 19____

19____ to 19____

19____ to 19____

This certificate is a receipt for the money paid and a release of the State's title or claim to the land redeemed for the years shown. Payment is accepted and given by virtue of Section 9, Article 3, Chapter 11-A of the Code of West Virginia, as enacted by Chapter 117, Regular Session 1941, and amendments thereto.

This certificate is issued conditioned on the final payment of check, draft or etc., given in payment thereof and is issued in triplicate, the original filed in Auditor's office; the duplicate (blue) redemptor's copy; and the triplicate (pink) to be recorded, filed and indexed in the County Clerk's Office.

DELINQUENCIES OR FORFEITURES PAID

Year Status Class 3	TAXES State, County, District and Municipal	Interest	Year Status Class	TAXES State, County, District and Municipal	Interest
1936	46.20	268.88	1960	50.82	149.41
37	45.99	262.14	61	50.82	143.31
38	45.78	255.45	62	50.82	138.23
1939	43.47	237.35	1963	50.82	132.13
40	44.31	236.62	64	50.82	126.03
41	41.37	215.95	65	50.82	119.94
1942	41.16	209.92	1966	50.82	113.84
43	38.64	187.79	67	50.82	107.74
44	36.96	175.19	68	50.82	101.64
1945	34.44	159.11	1969	50.82	95.54
46	36.12	162.54	70	50.82	89.44
47	34.44	150.85	71	50.82	83.34
1948	37.38	159.24	1972	50.82	77.25
49	46.83	193.88	73	50.82	71.15
50	47.25	189.95	74	50.82	65.05
1951	38.85	151.52	1975	50.82	58.95
52	39.27	148.44	76	50.82	52.85
53	39.27	143.73	77	50.82	46.75
1954	39.27	139.02	1978	50.82	40.66
55	39.27	134.30	79	50.82	34.56
56	41.16	135.83	80	50.82	28.46
1957	41.16	135.83	1981	50.82	22.36
58	41.16	130.89	82	50.82	16.26
59	50.82	155.51	83	50.78	10.16
			84	50.78	4.06
			85	58.83	

TOTAL TAXES	2,327.30
TOTAL INTEREST	6,325.64
PUBLICATION FEE	
CERTIFICATE FEE	10.00
TOTAL AMOUNT PAID	8,662.94

Glen B Gainer, III
Auditor of West Virginia.

C 641

NOTE—Abbreviations explained under "Status": S.S., Sold to State; Sp., Suspended from sale; Ex.A., Taxes extended by Auditor; Fid., Forfeited and taxes extended by Auditor.

COPY

LO 19

STATE COMMISSIONER OF FORFEITED AND DELINQUENT LANDS' RECORD

of delinquent land sold to the state, forfeited, escheated and waste and unappropriated, compiled from the sheriff's sale records, reports from assessor, county clerk, escheator and county surveyor of record in the State Auditor's Office.

Name in which charged with taxes when sold, escheated, or which should have been charged when forfeited:

Joice, Susan A.- Ross, Robert &

Hugh- Ross, Robert & Hugh Heirs

County Wayne

District Stonewall(Formerly Grant)

Municipality

Name in which entered on land books after sale or forfeiture, if transferred:

Year of transfer

19

19

19

Estate, quantity, description and location of land:

700A Mineral Cove Creek

SALE

Tax year for which sold to state 19

FORFEITURE

Years: 19 1878 to 19 85 Non-entry

ESCHEAT

Date or year of escheat 19

WASTE AND UNAPPROPRIATED

Date of report 19

List of taxes each year of delinquency, or forfeiture, subsequent to the year 1935, with status, value and class. (Taxes, interest, fees, penalties and costs released prior to tax year 1936, Article 4, Chapter 11-A, of the Code of West Virginia, as amended.

Explanation of abbreviations under "Status": S. S. sold to State; S. P., suspended from sale; N. D., not delinquent; Ind., sold to individual at Sheriff's Sale; R. P. S., redeemed from sheriff prior to sale; R. A., redeemed from Auditor; Ex. A., taxes computed and extended by Auditor.

TAXES - STATE, COUNTY, DISTRICT AND MUNICIPAL AT ORIGINAL VALUE AND CLASSIFICATION, AND PUBLICATION FEE, IF ANY						TAXES — STATE, COUNTY, DISTRICT AND MUNICIPAL AT ORIGINAL VALUE AND CLASSIFICATION, AND PUBLICATION FEE, IF ANY					
TAX YEAR	STATUS	VALUE	CLASS	TAXES	PUBLICATION FEE	TAX YEAR	STATUS	VALUE	CLASS	TAXES	PUBLICATION FEE
19 36	ExA	2100	3	46 20		19 56	ExA	2100	3	50 82	
19 37				45 99		19 57				50 82	
19 38				45 78		19 58				50 82	
19 39				43 47		19 59				50 82	
19 40				44 31		19 60				50 82	
19 41				41 37		19 61				50 82	
19 42				41 16		19 62				50 82	
19 43				38 64		19 63				50 82	
19 44				38 64		19 64				50 82	
19 45				36 96		19 65				50 82	
19 46				34 44		19 66				50 82	
19 47				36 12		19 67				50 82	
19 48				34 44		19 68				50 82	
19 49				37 38		19 69				50 82	
19 50				46 93		19 70				50 82	
19 51				47 25		19 71				50 82	
19 52				38 85		19 72				50 82	
19 53				39 27		19 73				50 82	
19 54				39 27		19 74				50 82	
19 55				38 27		19 75				50 82	
						19 76				50 82	
						19 77				50 82	
						19 78				50 82	
						19 79				50 82	
						19 80				50 82	
						19 81				50 82	
						19 82				50 82	
						19 83				50 78	
						84				50 78	
						85				68 83	

REDEMPTION RECORD

From Deputy Commissioner Forfeited and Delinquent Lands:

From Auditor:

Date 19

To and including year 19

RECEIVED
Auditors Office AUG 8 '85

Date

To and including year 19 85

A55

4700
1000
700
6400

OK

Date July 23, 1985

State Auditor of West Virginia
State Capitol Building
Charleston 5, West Virginia

I, Lewis Glenn Mills Assessor of Hayes County, West Virginia, by virtue of the authority vested in me by Chapter 11-A, Article 4, Section 6 of the Code, as amended, do hereby certify that the following real estate in _____ District, Stonewall, Municipality, was omitted from the Land Books of said County for the years 1878 to 1982, inclusive, and is, therefore, forfeited for non-entry in the name of:

Susan A. Joice 1878 to 19__, inclusive
Robert Rose and Hugh Rose 1878 to 19__, inclusive
Robert Rose and Hugh Rose Heirs 1878 to 1982, inclusive
Le DB C 85-86-87-88 DB C 89
19__ to 19__, inclusive

(Enter on lines above names of persons to whom property should have been assessed for each year during period of omission, and years for which said property should have appeared in each name.)

NAME in which property last appeared on Land Books: Susan A. Joice

YEAR in which property last appeared on Land Books: 1877

Description of property to be re-entered: 700 A. Mineral
Cove Creek

(Enter on lines above, acreage or lot number, etc., and whether fee, surface, coal, oil gas, minerals, etc.)

Pursuant to Chapter 11-A, Article 3, Section 6, of the Code of West Virginia, as amended, I certify the valuation to be $2100 - 700 acres, Class Number 3, for each year for which aforesaid property was omitted from the Land Books.

Approved: John W. McClung
CLERK OF THE COUNTY COURT

Lewis G. Mills
ASSESSOR

( ) TO BE CERTIFIED TO CIRCUIT COURT

( ) TO BE REDEEMED FROM STATE AUDITOR
and statement mailed to:

_____

_____

A56